

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Deanna McBrearty and Marylynn Hartsel,
individually, derivatively and on behalf of all
others similarly situated,

Plaintiffs,

-against-

The Vanguard Group, Inc., George U. Sauter,
Duane F. Kelly, John J. Brennan, Charles D. Ellis,
Rajiv L. Gupta, Amy Gutmann, JoAnn Heffernan
Heisen, Andre F. Perold, Alfred M. Rankin, Jr., J.
Lawrence Wilson, Acadian Asset Management,
LLC, Ronald D. Frasure, John R. Chisholm, Brian
K. Wolahan, AllianceBernstein LP, Henry S.
D'Auria, Sharon E. Fay, Kevin F. Simms,
Marathon Asset Management, LLP, William J.
Arah, Jeremy H. Hosking, and Neil M. Ostrer,

Defendants,

-and-

Vanguard International Equity Index Funds, d/b/a
Vanguard European Stock Index Fund, and
Vanguard Horizon Funds, d/b/a Vanguard Global
Equity Fund,

Nominal Defendants.

08 CV 7650 (DLC)

ECF Case

**VANGUARD DEFENDANTS' REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF THEIR MOTION TO DISMISS**

Defendants The Vanguard Group, Inc., George U. Sauter, and Duane F. Kelly (the
“Vanguard Defendants”), hereby request that the Court take judicial notice, pursuant to Federal

Rule of Evidence 201, of the following documents cited in the Vanguard Defendants' Motion to Dismiss Plaintiffs' Complaint:

- Stipulation and Proposed Order of Voluntary Dismissal as to AllianceBernstein Defendants, dated Oct. 7, 2008 (Exhibit A);
- London Stock Exchange Listing, from <http://www.londonstockexchange.com>, for Party Gaming PLC (Exhibit B), Sportingbet PLC (Exhibit C), and NETeller PLC (Exhibit D); and
- Vienna Stock Exchange (Wiener Borse) Listing, from <http://en.wienerborse.at>, for BWin Interactive Entertainment AG (Exhibit E).

These documents are properly subject to judicial notice pursuant to Federal Rule of Evidence 201. The Stipulation dismissing AllianceBernstein (Exhibit A) is a pleading filed with the Court in this action. *See Kavowras v. New York Times Co.*, 328 F.3d 50, 57 (2d Cir. 2003) (noting that “[j]udicial notice may be taken of public filings”). Stock exchange listings (Exhibits B, C, D, & E) are frequently subject to judicial notice on a motion to dismiss. *See Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 167 (2d Cir. 2000) (“[T]he district court may take judicial

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notice of well-publicized stock prices without converting the motion to dismiss into a motion for summary judgment."); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 272 F. Supp. 2d 243, 254 n.9 (S.D.N.Y. 2003) (taking judicial notice of stock prices on a motion to dismiss).

DATED: Los Angeles, California
October 27, 2008

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*Attorneys for Defendants The Vanguard Group,
Inc., George U. Sauter, and Duane F. Kelly*

EXHIBIT A

(05/05)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEANNA McBREARTY and MARYLYNN HARTSEL,
individually, derivatively and on behalf of all others
similarly situated,

Plaintiffs,

-against-

THE VANGUARD GROUP, INC. GEORGE U. SAUTER,
DUANE F. KELLY, JOHN J. BRENNAN, CHARLES D.
ELLIS, RAJIV L. GUPTA, AMY GUTMANN, JOANN
HEFFERNAN HEISEN, ANDRE F. PEROLD, ALFRED
M. RANKIN, JR., and J. LAWRENCE WILSON,
ACADIAN ASSET MANAGEMENT, LLC, RONALD D.
FRASURE, JOHN R. CHISHOLM, BRIAN K.
WOLAHAN, ALLIANCEBERNSTEIN LP, HENRY S.
D'AURIA, SHARON E. FAY, KEVIN F. SIMMS,
MARATHON ASSET MANAGEMENT, LLP, WILLIAM
J. ARAH, JEREMY H. HOSKING, and NEIL M.
OSTRER,

Defendants,

-and-

VANGUARD INTERNATIONAL EQUITY INDEX
FUNDS, d/b/a VANGUARD EUROPEAN STOCK
INDEX FUND, and VANGUARD HORIZON FUNDS,
d/b/a VANGUARD GLOBAL EQUITY FUND,

Nominal Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/14/08

Case No. 08 CV 7650 (DLC)

STIPULATION AND
[PROPOSED] ORDER OF
VOLUNTARY DISMISSAL AS
TO ALLIANCEBERNSTEIN
DEFENDANTS

Hon. Denise L. Cote

Pursuant to Fed. R. Civ. P. 41(a), and by agreement between counsel to
Defendants AllianceBernstein L.P., Henry S. D'Auria, Sharon E. Fay and Kevin F.
Simms (collectively the "AllianceBernstein Defendants") and counsel to Plaintiffs, the
undersigned stipulate that the AllianceBernstein Defendants be dismissed from this action
without prejudice based upon due consideration of the following:

1. The Verified Class Action and Derivative Complaint filed in this action asserted various class action and derivative claims against the AllianceBernstein Defendants under common law and 18 U.S.C. §1962. These claims were premised on alleged investments by the AllianceBernstein Defendants in certain "gambling businesses" while AllianceBernstein L.P. was acting as a subadvisor to certain mutual fund portfolios for which The Vanguard Group, Inc. is the registered investment advisor. (See, e.g., Complaint ¶¶ 1-9.)

2. Since the filing of the Complaint, the AllianceBernstein Defendants have provided an affirmation, and other evidence, to Plaintiffs' counsel establishing that the AllianceBernstein Defendants did not invest or have any knowledge of any investments in the subject gambling businesses (which were Party Gaming PLC, Sportingbet PLC, BWin Interactive Entertainment AG, and NETeller PLC) for the Vanguard portfolios.

3. In addition, counsel to Defendant The Vanguard Group, Inc. has represented to Plaintiffs' counsel that, based on a reasonable inquiry, he believes the statements made in the affirmation provided by AllianceBernstein to be true.

4. Under these circumstances, the undersigned parties agree that voluntary dismissal of the AllianceBernstein Defendants from this action is appropriate.

5. With respect to the putative class action claims asserted in this action, the notice and approval provisions of Fed. R. Civ. P. 23(e) do not apply because no class has been certified.

6. With respect to the derivative claims asserted in this action, Fed. R. Civ. P. 23(e) provides that a derivative action may be voluntarily dismissed subject to the Court's approval.

NOW, THEREFORE, IT IS HEREBY STIPULATED that the AllianceBernstein Defendants be dismissed as defendants from this action without prejudice and without cost to any party.

DATED: October 7, 2008

HANLY CONROY BIERSTEIN SHERIDAN
FISHER & HAYES LLP

By:

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Attorneys for Defendants AllianceBernstein LP,
Henry S. D'Auria, Sharon E. Fay, and Kevin F.
Simms

IT IS SO ORDERED.

Dated:

October 14, 2008

Hon. Denise L. Cote
U.S. District Judge

NY2#4807134v1
10/10/08 10:14 AM

EXHIBIT B

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PARTYGAMING | Currency GBX | Primary Listed Share
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	Bid	Offer	Volume	High	Low	Last Close
International companies	125.00	127.25	570,556	128.00	122.50	127.25

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Price : 125.75 Volume : 600

Price : 127.25 Volume :

[Stock quote service](#)Special conditionsPeriod name

NONE

EOA

Last 5 trades

Time/Date	Price	Volume	Trade value	Type
16:29:55 22-Oct-2008	125.25	2,667	3,340.42	Uncrossing
16:29:45 22-Oct-2008	125.25	1,929	2,416.07	Automatic 1
16:29:33 22-Oct-2008	125.00	132	165.00	Automatic 1
16:29:19 22-Oct-2008	125.00	1,492	1,865.00	Automatic 1
16:29:19 22-Oct-2008	125.00	6,666	8,332.50	Automatic 1

[Select news source](#) [Regulate](#)
Latest news stories

Time/Date	Code	Name	Headline	
09:00 22-Oct-08	PRTY	PartyGaming Plc	Addition of new games from WagerWorks	
14:30 20-Oct-08	CRP	Cryptologic Ltd	Licenses top branded casino games to PartyGaming	
14:21 20-Oct-08	PRTY	PartyGaming Plc	Addition of New Games from Cryptologic	
07:00 10-Oct-08	PRTY	PartyGaming Plc	Director/PDMR Shareholding	
09:25 30-Sep-08	PRTY	PartyGaming Plc	Total Voting Rights	

Charting

Share price performance

Source : London



Timeframe : 1-year

30-day MA

90-day MA

Grid

Compare with



or choose from

Select FTSE TM index ...

and

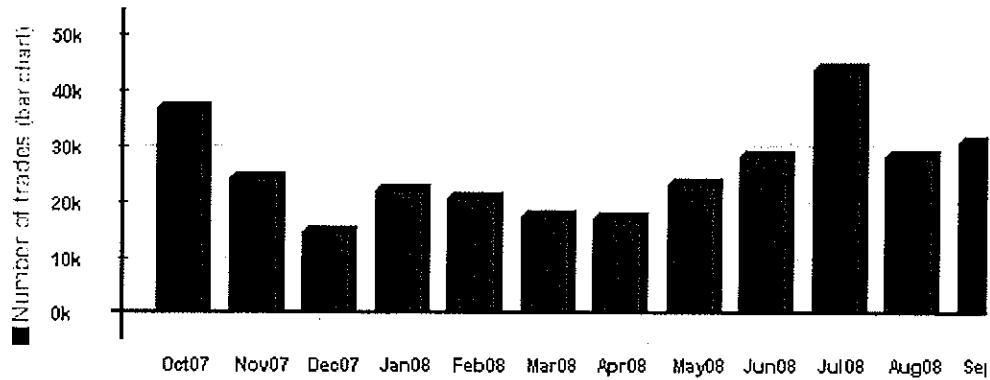
Select FTSE TM sector ...

You can customise the chart using the options above. To zoom in on a particular section of the chart drag your mouse across the chart. To zoom out, double click anywhere on the chart.

Number & value of trades

View : Number of trades - monthly

Source : London



Company information

Updated monthly

Company address 711 Europort, Gibraltar

Company website <http://www.partygaming.com>

Market cap (in millions)* £546.29

Listing/Admission to trading 30 June 2005

Trading system SETS

Market International Main Market

*The market capitalisation of companies reflects the London listed element only. These figures are approximate and are

Last updated: 21-Oct-2008

Trading information

22-Oct-2008

FTSE Index	FTSE 250; FTSE 350; FTSE ALL-SHARE; FTSE 250 EX INVESTMENT TRUSTS; FTSE 350 EX INVESTMENT TRUSTS; FTSE 350 HIGH YIELD; FTSE 350 EX INVESTMENT TRUSTS;
FTSE Sector	Travel & Leisure
FTSE Sub-sector	Gambling
Country of share register	JE
Segment	STMM
MiFID status	Regulated Market
Exchange market size	20000
SEDOL	B0B3SV4
ISIN number	GI000A0MV757

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Bid	Offer	Volume	High	Low	Last Close
28.00	28.50	452,278	29.10	28.04	28.50

[Dutch trading service](#)[International companies](#)

Results of opening auction

Results of closing auction

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Price : 28.75

Volume :

13354

Price : 28.50

Volume :

[Recent issues](#)Special conditionsPeriod name[Prices help](#)

NONE

EOA

[Stock quote service](#)**Last 5 trades**

Time/Date	Price	Volume	Trade value	Type
16:44:51 22-Oct-2008	29.10	50,000	14,550.00	Ordinary Tr
16:44:51 22-Oct-2008	29.10	50,000	14,550.00	Cancelled
16:44:45 22-Oct-2008	28.10	50,000	14,050.00	Ordinary Tr
16:38:08 22-Oct-2008	28.50	25,000	7,125.00	Ordinary Tr
16:11:12 22-Oct-2008	28.00	4,000	1,120.00	Uncrossing

[Select news source](#) [Regulate](#)
Latest news stories

Time/Date	Code	Name	Headline	
16:20 20-Oct-08	SBT	Sportingbet PLC	Holding(s) in Company	<input checked="" type="checkbox"/>
12:53 15-Oct-08	SBT	Sportingbet PLC	Purchase of own shares	<input checked="" type="checkbox"/>
07:00 15-Oct-08	SBT	Sportingbet PLC	Final Results	<input checked="" type="checkbox"/>
15:50 14-Oct-08	SBT	Sportingbet PLC	Turkey Update	<input checked="" type="checkbox"/>
07:00 10-Oct-08	SBT	Sportingbet PLC	Holding(s) in Company	<input checked="" type="checkbox"/>

Charting[Share price performance](#)

Source : London



Timeframe : 1-year 30-day MA 90-day MA Grid

Compare with

or choose from Select FTSE TM index ...

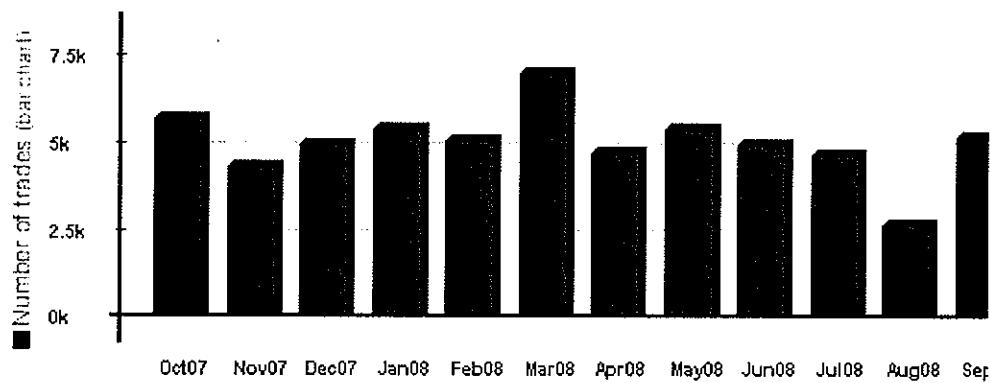
and Select FTSE TM sector ...

You can customise the chart using the options above. To zoom in on a particular section of the chart drag your mouse across the chart. To zoom out, double click anywhere on the chart.

Number & value of trades

View : Number of trades - monthly

Source : London !



Company information

Updated monthly

Company address 4th Floor, 45 Moorfields, London, EC2Y 9AE, United Kingdom

Company website www.sportingbetplc.com

Market cap (in millions)* £136.96

Listing/Admission to trading 30 January 2001

Trading system SETS

Market AIM

*The market capitalisation of companies reflects the London listed element only. These figures are approximate and are last updated: 21-Oct-2008

Trading information

22-Oct-2008

FTSE Index	FTSE AIM ALL-SHARE; FTSE AIM 100; FTSE AIM All-Share Index Leisure; FTSE AIM UK 50;
FTSE Sector	Travel & Leisure
FTSE Sub-sector	Gambling
Country of share register	GB
Segment	AMSM
MiFID status	MTF
Exchange market size	18000
SEDOL	0951625
ISIN number	GB0009516252

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	Bid	Offer	Volume	High	Low	Last Close
Dutch trading service	53.50	55.00	51,518	55.00	53.75	55.00

[International companies](#)[New issues](#)

Results of opening auction

[Recent issues](#)

Price : - Volume : - Price : 55.00 Volume :

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NONE EOA

Last 5 trades

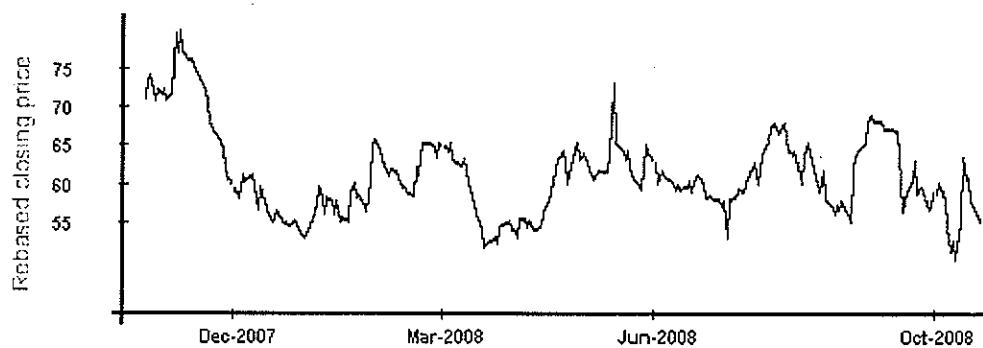
Time/Date	Price	Volume	Trade value	Type
16:16:29 22-Oct-2008	53.59	370	198.28	Uncrossing
16:07:09 22-Oct-2008	53.75	5,000	2,687.50	Ordinary Tr
14:21:40 22-Oct-2008	54.25	68	36.89	Automatic T
14:07:32 22-Oct-2008	54.25	5,000	2,712.50	Automatic T
12:46:34 22-Oct-2008	54.33	559	303.68	Automatic T

[Select news source](#) [Regulate](#)
Latest news stories

Time/Date	Code	Name	Headline	
07:00 21-Oct-08	NLR	NETeller PLC	Holding(s) in Company	
11:31 10-Oct-08	NLR	NETeller PLC	Director/PDMR Shareholding	
15:10 09-Oct-08	NLR	NETeller PLC	Holdings in Company	
07:00 09-Oct-08	NLR	NETeller PLC	Change of Name and Notice of EGM	
16:36 01-Oct-08	NLR	NETeller PLC	Holdings in Company	

Charting[Share price performance](#)

Source : London



Timeframe : 1-year

30-day MA 90-day MA Grid

Compare with



or choose from

Select FTSE TM index ...

and

Select FTSE TM sector ...

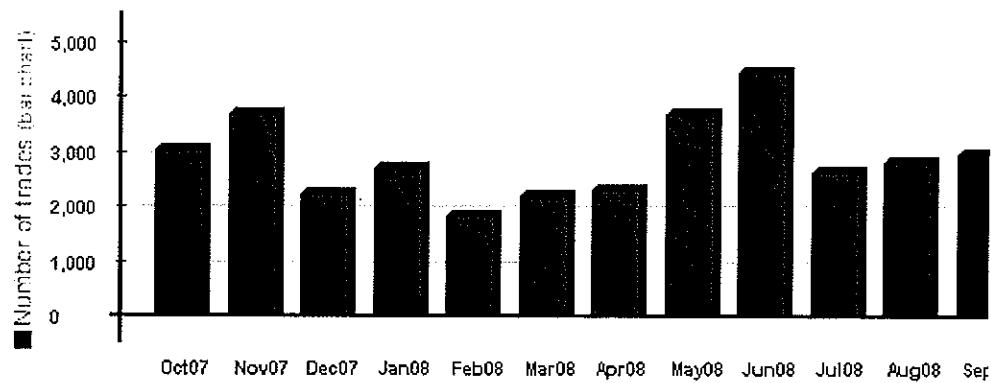
You can customise the chart using the options above. To zoom in on a particular section of the chart drag your mouse across the chart. To zoom out, double click anywhere on the chart.

Number & value of trades

View : Number of trades - monthly

Apply

Source : London !



Company information

Updated monthly

Company address	4th Floor, Standard Bank House, 1 Circular Road, Douglas, Isle Of Man, United Kingdom
Company website	www.netellerplc.com
Market cap (in millions)*	£65.96
Listing/Admission to trading	14 April 2004
Trading system	SETS
Market	AIM

*The market capitalisation of companies reflects the London listed element only. These figures are approximate and are Last updated 21-Oct-2008

Trading information

22-Oct-2008	
FTSE Index	FTSE AIM ALL-SHARE; FTSE AIM All-Share Index - Financial Services
FTSE Sector	General Financial
FTSE Sub-sector	Specialty Finance
Country of share register	GB
Segment	AMSM
MiFID status	MTF
Exchange market size	15000
SEDOL	3426454
ISIN number	GB0034264548

EXHIBIT E

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updated: 22.10.2008 20:00:23

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BWIN INT. ENTERT. AGLast Price **14.00** -1.06%

ISIN: AT0000767553

Date, Time 10/22/2008, 17:33:03

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Profile

Company: **bwin Interactive Entertainment AG**

Address: Börsegasse 11/Elevator 3/Top floor, 1010 Wien, Österreich

Website: <http://www.bwin.ag>

Short name: BWIN INT. ENTERT. AG

Common Stock	AT0000767553	Included in the following Indices	ATX, AT
Security-Symbol	BWIN	Shares included	
Market	Official Market	First day of trading	
Market Segment	Prime Market	Link to following ad-hoc reporting system	
Time of Opening Auction	9:15	Accounting	
Time of Intraday Auction	12:00	Business Year	
Time of Closing Auction	17:30		

Members of the Management board (Made available by the company)

Mr. Norbert Teufelberger, Co-CEO

Mr. Manfred Bodner, Co-CEO

Updated: Wednesday, 10-22-2008

updated: 22.10.2008 20:04:03

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BWIN INT. ENTERT. AGLast Price **14.00** -1.06%

ISIN: AT0000767553

Date, Time 10/22/2008, 17:33:03

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May Jun Jul Aug Sep Oct

Change (%)	-1.06%	Year high*
Change (abs.)	-0.15	Year low*
Last volume**	10,614	Total turnover volume**
Bid / Ask	- / -	Total turnover value**
Bid / Ask Size	0 / 0	Number of trades
Bid / Ask Order Indicator	0 / 0	Indicative Price
Open	13.94	Surplus Indicator
High	14.07	Surplus Quantity
Low	13.52	Trading form
Historic close	14.15	

[Interactive chart](#)

Closed

derivative products:

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Details

Market Segment	Prime Market	No of shares issued	32,728,763	Dividend
Type of Security	share	Currency	EUR	Dividend Ex Date
Market	Official Market	Auction with liquidity providers	yes	Dividend Bonus
Trading hours	09:15 - 17:33	Sector	Consumer Services	Subsector
Smallest tradable unit	1 piece			

Figures

	ATX Five	ATX Prime	ATX	2008	2007
rel. Performance (3 months)	29.82	25.46	23.92	Price Value ratio	-
				Capitalization	462.97
Beta (3 months)	0.55	0.71	0.70	EPS Basic Growth in %	+4.77%
Correlation (3 months)	0.54	0.61	0.59	Earnings Yield	-
				PEG	-
Technical figures				Cash Flow per Share	-
Volatility (3 months)		72.90		Equity ratio	-
VWAP		13.81		Earnings-per-Share	43.72%
				Price/Earnings ratio	1.55
					17.17

	5 Days	30 Days	100 Days	Price/Cash Flow	
Average price	13.68	16.89	17.92		9.52
Average volume	94,778	122,470	115,390		

* Last 52 weeks based on closing value

** Double Counting